IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1596 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MARIAMBANU W/OF MUNAFHUSSAIN MUSTUFA - Applicant(s)
Versus
THE STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR PS CHAMPANERI for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2 - 3.
NOTICE SERVED for Respondent(s) : 4,
MR MEHUL M MEHTA for Respondent(s) : 5,
MS.DEEPA R SREEKUMAR for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/10/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner – original

complainant has prayed for an appropriate writ, direction or order restraining the police officer attached with Dabhoi Police Station and further to direct the respondent No.1 to order to transfer the investigation of the petitioner's complaint at Annexure – B to C.I.D. (Crime) or to Central Bureau of Investigation. It is also further prayed for an appropriate order restraining the respondents from submitting any report into the investigation of the petitioner's complaint at Annexure – B to the Court either for taking cognizance or praying for a summary of A, B or C under sections 158 or 169 of the Criminal Procedure Code till pending hearing and final disposal of the present petition.

2. It is the case on behalf of the petitioner – original complainant that on 16.5.2006 at any time between 19.00 hours and 17.00 hours of 18.5.2006 serious offence of kidnapping and abduction of the petitioner's minor son, Taha and minor son of one Suraiya has taken place and

ultimately their dead bodies were found from the locked car of Dr. Jagdish Pankhi, who is attached with Vishwa Hindu Parishad (V.H.P.) and Rashtriya Swayamsevan Sangh (R.S.S.). It is the case on behalf of the petitioner that the petitioner's son Taha and other boy Salman were playing in the street in the evening on 16.5.2006 at about 5.30 or 6.00 p.m. and at that time one marriage procession was passing through and therefore both the boys joined the said procession wherefrom both the boys were abducted. It is further submitted that since both the boys did not return home the petitioner, her family members and Suraiya along with her family members had started searching for the minor children and intimation of missing of both the boys was also given. That despite the search made by the family members of the boys, they could not be found. However, at about on 18.5.2006 at about 5.00 p.m., the dead bodies of both the kids has been found in the car of one Dr. Jagdish Pankhi, which was parked near his dispensary. It is submitted that thereafter

the petitioner filed complaint being I CR No.68 of 2006 with Dabhoi Police Station for the offence under section 302 of the Indian Penal Code against Dr. Jagdish Pankhi. It is the case on behalf of the petitioner that till 21.6.2006 no steps were taken by the police inspite of the registration of the offence nor the crime was detected and nobody was arrested so as to facilitate the culprits to see that material evidence is vanished or destroyed or otherwise dealt with. It is the case on behalf of the petitioner that the petitioner and her family members submitted a representation raising their grievances to the Investigating Officer on 21.7.2006. It is the contention on behalf of the petitioner that as the said Dr. Jagdish Pankhi is a leader of V.H.P. and R.S.S., the investigation is not being conducted in a right perspective and therefore they submitted an application on 27.8.2006 for transfer of investigation either to C.I.D.(Crime) or Central Bureau of Investigation to find out and investigate into the homicidal death of the two

minor children. It is submitted that despite the said representation and application the petitioner has not received any response, the petitioner has preferred present petition under Article 226 of the Constitution of India for the aforesaid reliefs alleging inter alia that the police machinery is either hiding the real culprits of the offence or are facilitating the accused persons in not booking and bringing them to the justice.

3. Shri P.S.Champaneri, learned advocate appearing for the petitioner has submitted that the investigation of the aforesaid offence has not been conducted by the Investigating Officer in its true perspective and in right direction. It is also further submitted that names of the individual were disclosed and even doctor was not arrayed as an accused and no custodial interrogation has been carried out and straight way, the Investigating Officer prayed for Narco Analysis Test. It is also further submitted that justice is denied at the hands of Investigating

Officer. It is further submitted that it appears that the Investigating Officer has investigated that the accused has not committed any offence rather than to find out the guilt person and therefore, it is submitted that it can be said that the investigation is not carried out in right direction and in a fair manner.

4. An affidavit-in-reply is filed on behalf of the Investigating Officer denying the allegations made in the petition and further denying the allegations that the investigation has not been conducted in a right direction and fair manner. It is further submitted that as regards Dr. Jagdish Pankhi, full and thorough investigation has been carried out. It is further submitted that the report of the F.S.L. with respect to the car has been considered and even the final cause of death as per the P.M. note is also considered by the Investigating Officer. It is submitted that Lie Detector Test and Brain Mapping Test of the accused persons named in the FIR are also conducted and even Narco Analysis

Test is also to be performed, which has never been objected even by the accused persons. It is further submitted that the police has examined the case from various angles as mentioned in para – 15 of the affidavit-in-reply. It is submitted that even the Investigating Officer has investigated thoroughly Dr. Jagdish Pankhi, Mohmmed Mehboob Shaikh and Halima Mansuri who were prima facie found to be suspected. It is submitted that the P.M. report was prepared by penal of doctors under the leadership of Dr. A.N.Tondon, which has been received by the Investigating Officer on 25.5.2006 and as per the P.M. report final cause of death is stated to be "**Asphyxia following suffocation.**" It is also further submitted that the Investigating Officer has also considered the FSL report with respect to the car. It is also further submitted that the investigation is still going on and looking to the investigation papers and the investigation so far carried out, it cannot be said that the investigation has not been carried out at all by the Investigating Officer in a

right direction and/or in a fair manner. Therefore, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that when FIR was given on 18.1.2006 there was no accusation by the petitioner against Dr. Jagdish Pankhi and it is specifically mentioned in the said complaint / FIR that as per the petitioner, somebody has abducted the aforesaid two boys and have committed murder and placed the dead bodies in the car. Now, inspite of that the present Investigating Officer has interrogated Dr. Jagdish Pankhi and two others, who were found to be suspected persons, more particularly, as the dead bodies were found in the car of Dr. Jagdish Pankhi. During the course of investigation, the car was sent to FSL and the report has been received by the Investigating Officer in which it has been specifically found that the car was

absolutely in an unused condition, battery was discharged and it was possible to open the doors by some outside material. It also appears from the record that statements of various persons inclusive of Dr. Jagdish Pankhi and others are recorded during the course of investigation and thorough investigation has been carried out. It also further borne out from the record that Lie Detector Test and Brain Mapping Test of accused has been performed during the course of investigation and even the Narco Analysis Test is also to be performed for which Dr. Pankhi and others have shown their readiness and have never objected to the same. Now considering the investigation papers as well as other materials produced along with the affidavit-in-reply, it cannot be said that there is no investigation and/or the investigation has not been carried out by the present Investigating Officer in right direction and in a fair manner and in a right perspective. All possible efforts are made by the Investigating Officer to find out the accused persons who have committed offence and

still the investigation is going on. However, as stated above, in the facts and circumstances of the case and considering the investigation papers and other documents annexed with the affidavit-in-reply and even considering the affidavit-in-reply, it cannot be said that there is no investigation and/or the investigation is not in a fair manner and right direction. Under the circumstances, the prayer of the petitioner to transfer the investigation on the ground that the investigation is not carried out in a right direction and/or in a true perspective is not requires to be granted. Under the circumstances and considering above, the petitioner is not entitled to any relief as prayed for in the present petition and the present petition deserves dismissal and is accordingly dismissed. Notice discharged.

[M.R.Shah, J.]

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